

## Message Text

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ACTION STR-07

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 STRE-00 AGRE-00

CEA-01 CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01

INR-10 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01

CTME-00 AID-05 SS-15 ITC-01 TRSE-00 USIA-06 SP-02

SOE-02 OMB-01 DOE-11 /127 W

-----054027 272012Z /41

P 271912Z FEB 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 6527

INFO AMEMBASSY BRUSSELS

AMEMBASSY TOKYO

C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 03093

USMTN USEEC

ACTION STR FOR MATTHEISEN

STR PASS CODEL

E.O. 11652 GDS

TAGS: ETRD, MTN JA

SUBJECT: SAFEGUARDS BILATERAL WITH JAPAN

SUMMARY: DISCUSSIONS WITH KEY TOKYO MINISTRY DIVISION DIRECTORS AT U.S. MTN DEL FEB. 22, REVEALED FOR FIRST TIME TREND OF JAPANESE THINKING ON CONDITIONS UNDER WHICH IT MIGHT CONSIDER SELECTIVITY PROVISION IN SAFEGUARDS CODE. THEIR IDEAS, WHICH ARE STILL UNCLEARED, EVEN DISAGREED, AND WERE OFFERED TO US IN CONFIDENCE, EMPHASIZE EXPORTER CONSENT AND POSSIBILITY OF SEPARATE, MORE STRINGENT RULES GOVERNING SELECTIVE APPLICATIONS IF EXPORTER DOES NOT AGREE. END SUMMARY.

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1. AT REQUEST OF JAPANESE DEL, U.S. (CULBERT, HARTZELL, ADDUCI) MET WITH UKAWA AND KEY TOKYO MINISTRY DIVISION DIRECTORS (IKEDA, FOREIGN MINISTRY; KURODA, MITI; NOZOKI, FINANCE; YAMAZAKI (DEPUTY DIVISION DIRECTOR) AGRICULTURE) FOR REVIEW OF KEY SAFEGUARDS ISSUES. MEETING HIGHLIGHTED BY SURPRISINGLY OPEN DISCUSSION OF UNOFFICIAL JAPANESE THINKING ON SELECTIVITY.

IKEDA, WHO LED OFF DISCUSSION, PREFACED REMARKS WITH COMMENT THAT SELECTIVITY VIEWS HAD NOT BEEN CLEARED, WERE "HYPOTHETICAL" AND MAYBE NOT EVEN "PRACTICAL". NEVERTHELESS, JAPAN WOULD BE "REALISTIC" AND SUPPORTED MID-SUMMER MTN COMPLETION GOAL (IMPLICATION WAS THAT TOKYO ACCEPTED NECESSITY FOR SOME NEGOTIATION ON SELECTIVITY). HE SAID SINCE SELECTIVITY IS A NARROW EXCEPTION TO FUNDAMENTAL GATT PRINCIPLE OF MFN, RULES GOVERNING SELECTIVE APPLICATION MUST BE SEPARATE AND MORE STRINGENT THAN RULES ON GENERAL INVOCATION OF SAFEGUARD MEASURES. ELEMENTS ENVISAGED BY IKEDA (ADMITTEDLY OVERLAPPING, EVEN CONTRADICTORY) WERE AS FOLLOWS:

(A) SELECTIVITY LIMITED TO CASES WHERE INJURY OR THREAT CAN BE CLEARLY TRACED TO IMPORTS FROM ONE OR A FEW COUNTRIES; (B) EXPORTER'S CONSENT, EITHER EXPLICIT OR IMPLIED, REQUIRED; (C) IF SELECTIVE ACTION TAKEN WITHOUT CONSENT, EXPORTER AUTOMATICALLY "ENTITLED" TO RETALIATE (IMPLYING SOME CONSTRAINT ON RETALIATION IN CASE OF MFN ACTIONS) BUT MAY FOREBEAR EXERCISING THIS RIGHT IF CONDITIONS GOVERNING SELECTIVITY ARE MET, E.G., IF EXPORTER IS FULLY COMPENSATED; (D) STRICTER CONDITIONS ON EXTENT AND DURATION OF ACTION--NO EXTENSIONS PERMITTED; (E) EQUITY PROVISION TO PREVENT THIRD COUNTRY GAINING ADVANTAGE: IMPORTER  
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MUST CONSULT AT ANY TIME WHILE MEASURE IN EFFECT; (F) CLAIM BY EXPORTER THAT SELECTIVE ACTION IS NOT (OR IS NO LONGER) JUSTIFIED BE REFERRED TO MULTI-LATERAL SURVEILLANCE BODY; IF BODY SUSTAINS CLAIM, ACTION TO BE TERMINATED, SUBJECT TO AUTOMATIC RETALIATION RIGHTS.

2. WE INDICATED THAT WHILE JAPANESE WILLINGNESS TO EXPLORE THESE IDEAS WAS AN ENCOURAGING ADVANCE OVER LATEST JAPANESE SUBMISSION (INF/15), JAPAN SHOULD REMEMBER THAT SAFEGUARDS NEGOTIATION WOULD BE A "PACKAGE DEAL" AND THAT SELECTIVITY IS NOT THE ONLY ISSUE. WE DID NOTE, HOWEVER, OUR ASSESSMENT THAT SELECTIVITY WOULD HAVE TO BE NEGOTIATED IF THERE IS TO BE AGREEMENT, AND CAUTIONED JAPAN ON RISKS OF WAITING TOO LONG BEFORE DISCUSSING WITH EC. MANY IDEAS EXPRESSED BY IKEDA HAD FIGURED IN OUR OWN INFORMAL, INTERNAL DISCUSSIONS. JAPAN (UKAWA) ANSWERED THAT WHILE IT WAS "NOT YET" NEGOTIATING SELECTIVITY, IT DID INTEND TO MEET WITH EC AT SOME POINT AND NOT LET SUBJECT DRIFT TILL END OF DAY.

3. UKAWA AND KURODA BOTH EMPHASIZED THAT IKEDA'S REMARKS WERE HIS OWN AND DID NOT REPRESENT POLICY COMMITMENTS--UKAWA TERMED REMARKS "AN INTELLECTUAL DISCUSSION OF RANGE OF POSSIBILITIES," NOTING HE "COULDN'T LIVE WITH" SOME POINTS MADE BY IKEDA INCLUDING THOSE ON 'AUTOMATIC RETALIATION,' WHICH ALREADY AVAILABLE UNDER ARTICLE XIX AND, THEREFORE, WOULD NOT REPRESENT A TIGHTENING OF EXISTING CONDITIONS. FINALLY, UKAWA WARNED SOLEMNLY THAT IF EC FAILS TO MODIFY ITS EXTREME POSITION, JAPAN WILL BE FORCED TO SAY "BECAUSE OF EC'S INSISTENCE, THE TOKYO ROUND IS OVER."

4. RE U.S. APPROACH, KURODA WONDERED WHETHER INCLUDING

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 03093

OMAS UNDER CODE WOULD BE MINIMUM U.S. OBJECTIVE SINCE THAT WOULD APPEAR TO SATISFY U.S. CONGRESSIONAL DIRECTIVE. WE SAID WE SEEK TO BRING ALL TRUE SAFEGUARD MEASURES INCLUDING EXPORT RESTRAINTS UNDER INTERNATIONAL DISCIPLINE. ON THAT NOTE, KURODA STATED EXPORT RESTRAINTS ARE A "DELICATE AND DIFFICULT" MATTER FOR JAPAN. HE COULD ENVISAGE INCLUDING WITHIN SYSTEM ARRANGEMENTS LIKE THAT BY JAPAN AND U.S. ON COLOR TVS BUT NOT, FOR EXAMPLE, ARRANGEMENTS LIKE THAT WITH EC ON STEEL SINCE THEY ARE MADE BY INDUSTRY, NOT GOVERNMENT. WE PRESSED TO KNOW WHY INDUSTRY WOULD ENTER SUCH AGREEMENTS, SUGGESTING THAT THEY WERE IN FACT SAFEGUARD MEASURES, NOT AUTONOMOUS INDUSTRY

ACTIONS. KURODA SIDE-STEPPED QUESTION NOTING THE ADVANTAGE OF LOW PROFILE, FLEXIBLE PROCEDURES AVAILABLE UNDER VOLUNTARY EXPORT RESTRAINTS (VERS) AND PRESSED U.S. AGAIN ON PURPOSE OF BRINGING SUCH AGREEMENTS UNDER CODE DISCIPLINE. HE OBSERVED THAT "VER IS THE STEP BEFORE SAFEGUARD ACTIONS ARE TAKEN," ACKNOWLEDGING THAT, "COUNTRIES USE VER'S TO AVOID RESORT TO SAFEGUARD CONFIDENTIAL

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ACTION."

5. WE RESPONDED THAT PRACTICAL EFFECT WAS SAME AS SAFEGUARD ACTION, EXCEPT THAT NO INTERNATIONAL RULES CAME INTO PLAY, TRADE WAS DISTORTED, AND LACK OF TRANSPARENCY COULD CAUSE ECONOMIC/POLITICAL AND TRADE POLICY PROBLEMS FOR THIRD COUNTRIES. TO IGNORE VERS WOULD LEAVE MASSIVE LOOPHOLE IN SYSTEM OF OTHERWISE TIGHTENED SAFEGUARD RULES.

6. JAPAN QUESTIONED U.S. ON THE PURPOSE OF THIRD PARTY CONSULTATION RIGHTS. U.S. EXPLAINED PURPOSE IS, FIRST, TO CLARIFY EFFECT OF MEASURES ON THIRD PARTIES (WHICH COULD BE SIGNIFICANT); AND SECOND, TO PROVIDE FORUM WHEREIN IMPORTER MIGHT BE ABLE TO ADJUST SAFEGUARD MEASURE TO ACCOMMODATE THIRD PARTY CONCERNS. JAPAN THOUGHT SUCH ACCOMMODATION COULD AMOUNT TO A VER IF SOUGHT FROM EXPORTER AND THAT PROBLEM WOULD ARISE IF THIRD COUNTRY SEEKING ACCOMMODATION COULD NOT SATISFY SUBSTANTIVE CODE CONDITIONS (INJURY TEST).

7. COMMENTING ON JAPANESE VIEW THAT RETALIATION WAS UNCONSTRAINED "RIGHT" UNDER XIX, WE NOTED THAT XIX PERMITS IT ONLY WHERE "AGREEMENT...WITH RESPECT TO ACTION" NOT REACHED, AND CPS MAY DISAPPROVE IN ANY EVENT. U.S. SEEKING TO CLARIFY BASIS FOR REACHING AGREEMENT AND/OR CONDITIONS UNDER WHICH "DISAPPROVAL" SHOULD BE GIVEN.

8. JAPANESE TEAM WILL BE VISITING WASHINGTON THIS WEEK FOR FURTHER DISCUSSIONS, UNDER SURVEILLANCE OF UKAWA. MTN DEL WOULD APPRECIATE REPORTING OF ANY SIGNIFICANT DEVELOPMENTS.

DRAFTED BY ADDUCI MCDONALD

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DEL FEB. 22, REVEALED FOR  
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**To:** STATE  
**Type:** TE  
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